IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No.12718 of 2006
Date of decision:, 17.08.2006

Manjit Kaur

---Petitioner

Vs.

State of Punjab & Others.

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

Present: Mr. Vishal Sodhi, Advocate
for the petitioner.

ORDER:

The petitioner applied for allotment of a residential plot. Though the petitioner was declared successful in the draw of lots, she failed to make deposit of the amount required as per condition No.3 of the allotment letter and as such, his allotment was cancelled on 3.12.1997. Petitioner's appeal against the said order was also dismissed on 27.05.1998.

The petitioner applied under the Amnesty Scheme. Vide order dated 10.08.2000, he was required to deposit Rs.3,89,970.00, but he deposited only Rs.2,50,000.00 on 28.4.2005 i.e. after about five years. The petitioner deposited further sum of Rs.4,30,625/- and filed a mercy petition for restoration of plot on 23.5.2005 which was dismissed. Hence this petition.

It is submitted that once money has been paid and accepted, allotment of plot must be restored.

Learned counsel for the petitioner has placed reliance on a judgment of Hon'ble Supreme Court in ***Terri Oat Estates (P) Ltd. v. U.T., Chandigarh & Others*** (2004) 2 Supreme Court Cases 130, wherein it was observed that power of resumption and forfeiture of money deposited by lessee should be exercised only as a last resort in case of default in making these payments. It was also observed that application of the said power depends on factual matrix of each case and no hard and fast rule can be laid down therefor. In the said case, principle of proportionality was applied and it was held that delay was not willful or dishonest but on account of situation beyond the control of the petitioner. The judgment does not apply to the present case.

Reliance has also been placed on judgments of the Hon'ble Supreme Court in ***State of Punjab v. M/s Nestle India Ltd. and another*** AIR 2004 Supreme Court 4559 and ***R.K. Saxena v. Delhi Development Authority*** AIR 2002 Supreme Court 2340 to submit that when payment has been accepted, the authorities are bound to restore the allotment.

In the present case, the deposit was made after a considerable delay without showing any conscious acceptance by the authority with a view to restore plot. In ***R.K. Saxena's*** case (Supra), extension of time was upto 8.8.1996. However, deposits were made nearly one month thereafter. Cancellation of allotment was long after the petitioner therein had paid the entire amount due alongwith interest @ 25% per annum was set aside having regard to facts of that case.

In ***M/s Nestle India Ltd.'s*** case (*Supra)*, the Government declared abolition of purchase tax w.e.f. 1.4.1996. Subsequently, on 4.6.1997, decision to abolish purchase tax was recalled. This decision was set aside after recording a finding that no overriding public interest was established which would make it inequitable to enforce the estoppel against the State Government.

In the present case, the petitioner having failed to make deposit initially as well as under the Amnesty Scheme, deposited all the amount subsequently after 5 years of the demand, which cannot be a ground to seek mandamus for restitution of allotment. The judgments relied upon are distinguishable. Accordingly, the writ petition is dismissed. The petitioner will be at liberty to seek refund of the amount paid by the petitioner, if admissible, in accordance with law.

(ADARSH KUMAR GOEL)
JUDGE

August 17, 2006
ashwani

(RAJESH BINDAL)
JUDGE